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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,149	01/02/2002	Bob Janssen	DVME-1018US	9408
21302	7590	09/18/2009	EXAMINER	
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ART UNIT		PAPER NUMBER		
2456				
		MAIL DATE		DELIVERY MODE
		09/18/2009		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte BOB JANSSEN and PETER JANSEN
11

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13 Appeal 2009-003272
14 Application 10/040,149
15 Technology Center 2400
16

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18 Oral Hearing Held: August 12, 2009
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22 Before KENNETH W. HAIRSTON, JOHN C. MARTIN and BRADLEY
23 W. BAUMEISTER, Administrative Patent Judges.
24

25 ON BEHALF OF THE APPELLANTS:
26

27

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33

34 The above-entitled matter came on for hearing on Wednesday, August
35 12, 2009, commencing at 9:24 a.m., at The U.S. Patent and Trademark
36 Office, 600 Dulany Street, Alexandria, Virginia, before Ashorethea
37 Cleveland, Notary Public.

1 THE USHER: Good morning. Calendar Number 36, Appeal Number
2 2009-3272. Mr. Dunleavy.

3 JUDGE HAIRSTON: Okay. Good morning. You may begin.

4 MR. DUNLEAVY: Thank you.

5 The present invention is directed to solving the problem that you
6 encounter frequently in Windows operating systems, that you need two
7 different user interfaces to run local applications on the one hand and remote
8 applications on the other hand.

9 This typically requires the user to have a, first, desktop that's directed
10 to the local applications and have to switch to another desktop or an
11 interface to run remote applications. You've seen this in typical Windows
12 operating systems.

13 This interface-switching is a problem for users because it causes
14 confusion, requires extra work and there are other disadvantages to this, as
15 well.

16 Now, the invention is directed to providing the user with a single-user
17 interface that's provided by the server. The interface can be used to interface
18 with applications running on the server and at the same time it can be used to
19 execute local applications and display content which is generated locally.

20 This is an elegant solution to this problem because no
21 interface-switching is required back and forth by the user in order to run
22 either local or remote programs and therefore the --

23 JUDGE HAIRSTON: Who controls? Who controls these
24 applications between the server and user?

25 MR. DUNLEAVY: Well, remote applications which are located on
26 the server would be run on the server and local applications that are on the

1 client computer in case of a fat client would be run on the local computer;
2 and all of these applications are controlled by the user through the
3 single-user interface that's presented by the server to the user.

4 This also enables the users, for example, to easily switch from one
5 computer to another in the network because the user interface is coming
6 from the server; and so, you don't have to change the settings when you go
7 to another computer as you frequently have to do with a Windows-type
8 system in order for the user to get their interface that they're familiar with.

9 It also allows central management of the server applications and the
10 client displays; so, it makes the IT person's job a little bit easier because
11 most things can be managed centrally in this type of system, and it also gives
12 you the flexibility to use thin clients or fat clients.

13 So, if you only really want to run remote applications on the server,
14 then you can just have a very simple computer, thin client, in one location.

15 If you have another person in the network who needs to do special
16 things, like maybe graphics programs or has to run some Legacy software,
17 for example, or perhaps you want to minimize your license fees and only
18 license a particular program for a couple of users and not for the entire
19 company, you can set up specific fat-client computers which have local
20 software in this system easily in order to address some of these problems.

21 The system is very efficient because you only need to send across the
22 network the commands that are input into the user interface by the user and
23 then coming back you will have only screen-display information for the
24 remote applications and for local applications all you really need is a
25 command line coming back from the server to execute the local applications;

1 and then, the local applications again will send their screen-display
2 information out to the server and that will come back via the user interface.

3 So, you don't need, for example, application code located on the local
4 computer in order to run programs on the server like we do in many cases in
5 Windows applications. A lot of the time, some of the processing also occurs
6 at the local computer for the remote applications and data has to be sent back
7 and forth, as well. That can be avoided in this system.

8 Let's talk a little bit about Frese. Frese was the first reference over
9 which the claims were rejected as being anticipated.

10 Frese is directed to allowing remote control of applications over a
11 network from a local computer; and what Frese does is, when a person sits
12 down and turns on the computer, the first thing that happens is that an RDM
13 display program is selected using an HTML document. I think what
14 happens is, the browser in Frese will send an HTML document out to the
15 server with specific parameters saying, "I need this kind of display." The
16 display is then picked and provided by the server back to -- the program is
17 provided by the server back to the client computer and executed on the client
18 computer. That's important.

19 The primary function, I think, of the HTML document in Frese is to
20 identify the operating system on a particular client computer so that you can
21 get the right display program sent to the client computer for that particular
22 operating system. It can also have other specific parameters of the display
23 specified if you want to but Frese says that's an optional feature.

24 Now, Frese is really a completely different principle than the present
25 invention because in the present invention the server is actually running the
26 application that controls the display in the client computer whereas in Frese

1 the server just sends the program code over to the client computer but the
2 client computer actually executes the code and controls the display.

3 So, Frese comes up with a totally different solution to his problem,
4 namely, to run the display application, the interface application, on the client
5 computer rather than on the server.

6 Now, when we look at our claim one, our claim one has the language
7 in it that says that the system is configured to enable the server to control the
8 display on a screen of the displayed device, of a screen area having contents
9 generated locally on the client computer. Now, that's the key limitation that
10 we rely on for distinguishing from Frese.

11 Now, the Examiner takes the position that that claim limitation only
12 requires that you have a server and a client computer and a connection
13 between the server and the client computer and that the system is capable of
14 being provided with means to control the client display at the server.

15 JUDGE HAIRSTON: So, it's controlling not only the display but it's
16 controlling the local computer, right? You're sending an application from
17 the server to the local computer. You're displaying something which
18 scavenges, I guess, the local computer as it's running everything; right?

19 MR. DUNLEAVY: No. Actually what's happening in Frese is that
20 the code --

21 JUDGE HAIRSTON: No. I mean, your case, your invention.

22 MR. DUNLEAVY: Yeah; in our case it's running the graphic-user
23 interface on the local computer. It's not actually necessarily running
24 everything that's going on on the local computer but it's running the entire
25 user interface.

26 JUDGE HAIRSTON: So, it's running the --

1 MR. DUNLEAVY: Yes.

2 In Frese, the local computer runs the graphic-user interface.

3 Now, it's our position that the Examiner's interpretation of the claim
4 language is not legally correct because under the Examiner's interpretation
5 there would be no means required to run the user interface located on the
6 server. That's the Examiner's interpretation.

7 He basically says in this argument that if the server is capable of being
8 provided with such a means, it meets the claim. Our position is, no, that's
9 not correct. You actually need some means under this claim language to run
10 the local graphic-user interface in order to meet the claim.

11 We relied on the case of Boston Scientific vs. Cortis which interpreted
12 this claim language configured to enable to require that it be intentionally
13 and specifically made to act in a certain way.

14 If you look at our specification, some means is required; and the
15 specification talks about, for example, having an interface management
16 program located on the server. If you don't have that, as the Examiner's
17 position would be, then you wouldn't be able to actually meet the claim
18 language because the server is then not enabled to run the graphic-user
19 interface without that.

20 JUDGE BAUMEISTER: May I interrupt and ask a couple of
21 questions here?

22 MR. DUNLEAVY: Sure.

23 JUDGE BAUMEISTER: On claim one, line one, two, three, four,
24 where it talks about the system, it says the system comprises the means for
25 controlling and "is configured." "Is configured." That refers back to the
26 system?

1 MR. DUNLEAVY: Yes.

2 JUDGE BAUMEISTER: So, the means isn't playing into,
3 "configured to enable"? The system is configured to enable and it comprises
4 the mean?

5 MR. DUNLEAVY: Yes.

6 JUDGE MARTIN: So, the system comprises means for running the
7 local applications through the user interface. That's one aspect of it.

8 Now, the system is also configured to enable the server to control the
9 display on the screen of the displayed device. So, there has to be something
10 in the system which allows the server to control the display on the screen of
11 the displayed device; and the specification discloses, for example, the use of
12 an interface management program on the server.

13 Now, in Frese isn't the remote display
14 module -- that information was downloaded from the server and it controls
15 how things are displayed on the client; right?

16 MR. DUNLEAVY: It does control how things are displayed on the
17 client; but actually what happens is, yeah, the code is sent to the local
18 computer. So, in the case of Frese, the remote display module is actually run
19 on the client computer.

20 So, when the interface is up and running the server in Frese is not
21 participating in any way. It's not controlling. All it really does is provide
22 some code to the client computer to do the control. That's something
23 different than controlling the actual display.

24 So, as the user is using the display in Frese, the server is not
25 participating in that anymore. That's happening at the local computer.

1 JUDGE MARTIN: So, your definition of "controlling" is? How do
2 you explain control?

3 MR. DUNLEAVY: Well, the specification talks about control in that,
4 you know, the client will, for example, or the user will, for example, make
5 an input into the user interface, saying, I want to run this program. That will
6 go to the server and the server will then change the user interface in response
7 to that input. That's one of the aspects of the control of the user interface.

8 So, for example, it will open a window for the local application in an
9 area of the display if the client executes a local application. It will also add a
10 button on the taskbar so the client can switch back and forth between
11 applications, and those things are controlled by the server. The server
12 actually adds the window, sends that information to the local computer to
13 add the window and add the button to switch back and forth between
14 applications.

15 So, I think the word "control" we're interpreting as actually making
16 the decisions as to what the user interface will look like based on inputs
17 from the client and also to display the information from the applications, as
18 well.

19 JUDGE MARTIN: I have another question.

20 MR. DUNLEAVY: Sure.

21 JUDGE MARTIN: A comment you made just a few moments ago.
22 Maybe I misunderstood it. It sounded to me like you said that the server
23 downloads an application to the client and then the server isn't involved
24 anymore.

25 MR. DUNLEAVY: It's not involved in the graphic-user interface.

1 JUDGE MARTIN: But it is still involved in the running of the
2 application on the server?

3 MR. DUNLEAVY: Yes. All the server would do in Frese is, it
4 would be running the remote application and it would be sending
5 information back, you know, content for example generated by remote
6 application to the client but it would not actually be running the graphic-user
7 interface. That's done by the RDM output.

8 JUDGE MARTIN: Now, when you say "running the remote
9 application," which application of Frese is the remote application?

10 MR. DUNLEAVY: Well, Frese just wants to provide an interface at
11 the local computer so that you can run applications over a network.

12 JUDGE MARTIN: I'm sorry. I misspoke. The remote application is
13 the server application?

14 MR. DUNLEAVY: Yes.

15 JUDGE MARTIN: Okay. So, the server downloads enough
16 information to the RDM module on the client so that the server can then
17 send information to the client and have it displayed and also receive input
18 from the client; right?

19 MR. DUNLEAVY: Mm-hum.

20 JUDGE MARTIN: So, all the communications are HTML format;
21 right? That's a question. Is every time information goes back and forth
22 between the server and the client, is each one of those HTML transmission?
23 Is each one a document?

24 MR. DUNLEAVY: I'm not really sure about the answer to that. I
25 don't think there's enough detail in any of the prior-art documents to really
26 say that. It could be other formats, I would think.

1 But I think that the key distinction when we get back to Frese is that
2 in Frese it's the local client computer that's going to make the decision to
3 open a window. It's the local client computer that's going to put buttons on
4 the taskbar and take buttons off the taskbar; and also, it's the local client
5 computer that's going to close the windows.

6 In the present invention, those decisions are made at the server and
7 then only the information about what's going to be displayed on the client
8 computer is sent over.

9 So, there's a difference in where the decisions are made. As a result of
10 that, you don't need as much processing power, for example on a local
11 computer either, because you're not executing the decisions for the user
12 interface at the local computer.

13 JUDGE MARTIN: I have another question about locally-generated
14 contents. Now, as I understand the Examiner, he's saying that the
15 information that's displayed on the client computer is generated locally when
16 the server is asking the user to input information, like password information
17 into the client computer.

18 I'm not sure whether the Examiner is saying that the fact that client
19 computer is generating the characters and displaying them, whether that is
20 what the Examiner considers to be contents that are generated locally, the
21 fact that the display is generated locally, or whether the Examiner wants us
22 to take into account that the user then responds to that request by typing in
23 information which will probably appear on the screen before he hits the
24 "send" button to send it back to the server.

25 What are your views on both of those interpretations?

1 MR. DUNLEAVY: Well, I think that the claim talks about providing
2 input through the user interface. So, the providing input I think is what
3 applies to the situation when the user is typing in a password. That would be
4 considered input. I think the Examiner confuses "input" with "content." So,
5 that's one aspect of it.

6 The other aspect of it is that: I think the Examiner also confuses the
7 graphic-user interface itself with content.

8 In other words, some of the comments made by the Examiner suggest
9 that the window itself may be locally-generated content, and that's not
10 correct.

11 The claims talk about the user interface as being an element and then
12 content being a different element of the claim.

13 So, we would take the position that the windows and the buttons are
14 the user interface. The Examiner seems to be arguing that that is content;
15 but that is not really content.

16 Our position is that content is really the situation where you're running
17 a local application and the local application generates, for example, a report
18 that you want to look at. That's the kind of content we're talking about. So,
19 that's what is meant in the claim language by content, something coming
20 from the local application that is going to be displayed to the user in the
21 window, for example, of the user interface that's provided by the server.

22 JUDGE MARTIN: So, that wouldn't include the user typing in a
23 password and having it displayed?

24 MR. DUNLEAVY: No. I think the user typing in a password is
25 really what we call input to an application by the user and that is also

1 another element in the claim. The input device is provided. It's line four of
2 claim one for providing input to an application through the user interface.

3 JUDGE MARTIN: So, we are supposed to, if I understand you,
4 interpret content generated locally by the client computer to mean
5 information is generated locally but isn't being input by the user?

6 MR. DUNLEAVY: Yes. The claim says, contents generated locally
7 on the client computer. So, the language "on the client computer" means
8 that the client computer is actually what's generating the content, not the
9 user.

10 JUDGE MARTIN: Well, I might agree if it says "generated locally
11 by the computer" but "generated locally on the computer," that sounds like
12 that would allow the user to be putting information on a computer.

13 MR. DUNLEAVY: Yeah; but you know, it's really the user that's
14 generating the input. It's not generated on the computer. I mean, it's typed
15 into the interface but it's not generated on the computer. The user is the one
16 generating the password. It's coming from here as "input" being a key word.
17 So, it's not really generated on the computer.

18 So, I still think that the combination of "generated on" makes a
19 distinction there as opposed to just having the content being generated by the
20 user and then input to the computer.

21 JUDGE BAUMEISTER: Can the user generate content?

22 MR. DUNLEAVY: The user can generate content in that, for
23 example, the user may input some information that might --

24 JUDGE BAUMEISTER: Scanning something?

25 MR. DUNLEAVY: Yeah, scanning something, or maybe inputting
26 names and address that might show up in a display generated by the local

1 computer. You know, maybe the user is creating a document. Part of the
2 document content could be created by the user; part of it by the computer.

3 So, just to sum up: I think that our position is that the mere
4 transmission of the code, RDM output to the local computer which is then
5 run on the local computer by the -- a mere transmission by the server is not
6 enough to control the local user interface for the reasons we specify.

7 Also, Frese does not have a server-controlled user interface which
8 displays content which is generated on the local computer.

9 So, those are the two key points that I think distinguish the claims
10 from Frese.

11 JUDGE BAUMEISTER: Before we go on to Willems, I have a
12 couple more questions. Claim one sets forth four means that you say in your
13 Brief are all means-plus-function claim language; right?

14 MR. DUNLEAVY: Yes.

15 JUDGE BAUMEISTER: And the first mean is the means of
16 providing the client computer with a user interface. I understand that
17 corresponds to the interface management program?

18 MR. DUNLEAVY: Yes.

19 JUDGE BAUMEISTER: The second mean is the means for running
20 the program on the server and the third mean is the means for running the
21 program on the computer and I understand those both correspond to your
22 processor, RAM, things like that with respect to the computing system.
23 Then the fourth means is the means for controlling the locally-run
24 applications through user interface provided by the server and that is the
25 subscriber interface program?

26 MR. DUNLEAVY: Yes.

1 JUDGE BAUMEISTER: Am I right that the interface management
2 program and subscriber interface program are both software programs?
3 Right?

4 MR. DUNLEAVY: I think as they are disclosed in the specification,
5 yes.

6 JUDGE BAUMEISTER: Is there any description or disclosure in the
7 specification for the underlying structure or details of the software program?

8 MR. DUNLEAVY: I don't think there is detailed description in the
9 specification of these software programs but a skilled person at the time this
10 application was filed could implement these types of programs without
11 difficulty, and that's why the specification doesn't go into great detail about
12 that.

13 JUDGE BAUMEISTER: I'm not really quite as concerned about the
14 enablement aspect. Are you familiar with Finisar and --

15 JUDGE HAIRSTON: Aristocrat.

16 JUDGE BAUMEISTER: -- Aristocrat, dealing with 112-sixth for use
17 function when the use function disclosed is software and then those cases
18 say a specification has to disclose the underlying structure or diagram or
19 some details or structural details of the software itself and not just merely the
20 intended function or the use of the software?

21 MR. DUNLEAVY: Yes.

22 JUDGE BAUMEISTER: If it's not done with 112-sixth, does it
23 present a problem?

24 MR. DUNLEAVY: Well, I think in this case, there are some
25 structural details of the software described in the specification, more than

1 just the intended function. If you will permit me just a moment to access my
2 specification here.

3 JUDGE BAUMEISTER: Sure. Take your time.

4 (Pause.)

5 MR. DUNLEAVY: So, there are some details, I think, disclosed at
6 least on page ten of the specification. So, to start, I guess, at line 16. So, it
7 explains in a little bit of detail how the underlying system is working. "The
8 user clicks on a button associated with the application." "The interface
9 management system ensures that the user can control." "If the user clicks on
10 the button, a switch is made to the application. Messages are exchanged
11 between the server and client computer which are handled by the
12 subscriber," and it talks about protocols by which signals between the client
13 computer and the server allow termination of locally-run applications.

14 The other point here I think is that, you know, these kinds of programs
15 are well known in programs of the art and I think there's some well
16 established case law also that says patent applicant is not required to disclose
17 things that are common, general knowledge to the skilled person.

18 I think the skilled person can -- you know, it was common, general
19 knowledge at the time to be able to make or just take an existing interface
20 management program, for example, or an existing subscriber program and
21 apply it to the system in the present invention.

22 JUDGE BAUMEISTER: Okay. One other question on claim 19.

23 MR. DUNLEAVY: Mm-hum.

24 JUDGE BAUMEISTER: Claim 19 is broader; right? Eighteen and
25 19 are not directed to the whole system? They're directed to the interface
26 management program and subscriber program respectively. So, claim 19,

1 the computer program stored on a computer -- that's corresponding to the
2 subscriber interface program?

3 MR. DUNLEAVY: Well, I think it's a combination of both the
4 subscriber interface program and the interface management program in
5 claim 19. I think there are elements in claim 19 that refer to both of those
6 devices.

7 JUDGE BAUMEISTER: Can you point to the part in claim 19 that's
8 directed towards the interface management program?

9 MR. DUNLEAVY: Well, it says that the computer program -- this is
10 line -- one, two, three, four, five, six. Starting sort of at the end of line six,
11 "Wherein the computer program when run on the computer causes the
12 computer to accept the user interface, the user interface being configured for
13 controlling the at least one locally-run application and being provided by the
14 server."

15 So, we're talking about then the user interface provided by the server
16 and also controlling at least one locally-run application. Those are I think
17 included in the specification. Those are functions of the interface
18 management program rather than the subscriber program.

19 JUDGE BAUMEISTER: My understanding is the interface program
20 and subscriber program are complementary. The interface program is on the
21 server. The subscriber interface program is on the computer. The interface
22 management program forwards the interface to the local computer which is
23 picked up by the subscriber interface program and these two interface
24 programs talk to each other to handle -- ?

25 MR. DUNLEAVY: Yes. I think that's a correct statement.

1 JUDGE BAUMEISTER: And so, the interface management program
2 is stored on the server. It's not stored on the client computer; and claim 18 is
3 directed towards the program on the server, "a computer program stored on a
4 computer readable medium wherein the computer program can be loaded
5 onto a server," contrasted with claim 19, "a computer program stored on a
6 computer readable medium wherein the computer program can be loaded
7 onto a computer."

8 MR. DUNLEAVY: Mm-hum.

9 JUDGE BAUMEISTER: Then am I also correct that the computer
10 program on this computer readable medium is the only element that is being
11 positively recited? The computer itself, the server, the user interface, the
12 network, the processor, the means for running, those are all inferentially
13 recited elements but the claim is directed only to this computer program on
14 the computer --

15 MR. DUNLEAVY: Yes. I believe you're correct. I believe I
16 misspoke earlier about that. So, I think that taking that a step further, the
17 important point about claim 19, computer program, is that -- I think it is the
18 subscriber program, as you pointed out. I think that's a correct
19 interpretation.

20 This subscriber program causes the computer, a local computer to
21 accept the user interface being provided from the server, and that would be a
22 difference from Frese wherein the interface is actually being generated at the
23 local computer. It's not being caused to be accepted from a server computer.

24 JUDGE BAUMEISTER: And the claim language says, "The user
25 interface configured for controlling the at least one locally-run program, the
26 user interface being provided by the server." I'm wondering just how does

1 being provided by the server -- whether the interface that is provided by the
2 server comes from anywhere else, how that would affect this computer
3 program that's loaded on the machine?

4 How does being provided by the server structurally distinguish or
5 limit a computer program? I'm trying to figure out, is this like a
6 product-by-product process limitation?

7 MR. DUNLEAVY: Well, I think there are a couple of structural
8 differences. First of all, the subscriber program of claim 19 is going to have
9 to have a structure that will accept the user interface coming across from the
10 server as opposed to taking user interface from the local computer in Frese.

11 The second point is, I think there has to be some structure to execute
12 for the computer program in claim 19 wherein the subscriber program would
13 be configured so that it could accept from the server a command line coming
14 back to execute the local program. That's also something that's not
15 happening in Frese, is that the command line is not coming back from the
16 server to execute the local program.

17 In Frese, when you execute a local program, the command goes
18 directly from the user interface to the local computer. It doesn't go out to the
19 server and then come back to the command line.

20 So, I think you have to have a little different software structure so that
21 you can accept your command lines coming from the server as opposed to
22 coming directly from the user interface.

23 JUDGE HAIRSTON: Counsel, can we get you to sum up? We're
24 running a little over here.

25 MR. DUNLEAVY: Okay. Do we want to talk Willems at all?

26 JUDGE HAIRSTON: Yes. Go ahead. Yes. Please.

1 MR. DUNLEAVY: Okay. Willems is a system that's directed to
2 disparate Windows environments, for example, a local Windows
3 environment and then a remote ex-Windows environment that's described in
4 Willems.

5 Willems is designed to provide user control of the remote
6 ex-Windows application.

7 So, in Willems, the graphic-user interface is provided by the
8 locally-run Windows manager in figure nine embodiment of Willems; and
9 the reason for that is primarily to reduce network traffic. That's the primary
10 goal of Willems. We see that repeated several times throughout the Willems
11 application.

12 Willems also has a secondary goal of reducing the front-end code and
13 achieves that also by placing the graphic-user interface control on the local
14 computer.

15 Now, Willems lacks a couple of features of the present invention. It
16 lacks server control of the client-user interface and it also lacks the ability to
17 run local applications or execute local applications and/or display local
18 content in a server-controlled interface.

19 So, Willems does not really provide then a single-user interface where
20 you can interface with both the server and remote programs and local
21 applications, as well. It's really just directed to providing a specialized
22 interface for interfacing with the remote Windows, ex-Windows
23 applications.

24 So, I think in the Willems system, if you wanted to run local apps, you
25 probably still would have to deal with the problem of switching the
26 interfaces back and forth to do that locally.

1 So, Willems' primary goal is to reduce network traffic. The secondary
2 goal is to reduce front-end code.

3 The Examiner initially rejected this application over figure nine and
4 then withdrew that rejection and then came back with a new rejection based
5 on the prior-art, figure eight of Willems.

6 I think that the original objection was withdrawn because Willems has
7 a clear teaching that you should put the graphic-user interface controller on
8 the local computer in order to reduce the network traffic.

9 The Examiner is doing some contortions in his arguments to try to say
10 that, well, this teaching of Willems doesn't apply to the prior-art
11 embodiment. But the problem with the Examiner's rejection is that you still
12 have to make two significant modifications to the prior-art embodiment in
13 order to get to the present invention. You need some reason for making
14 those modifications.

15 If you look at the Willems disclosure, the reasons that are given for
16 making modifications would be to reduce the network traffic and front-end
17 code; and Willems then says: Here's how you do it. You put the controller
18 for the graphic-user interface on the local computer.

19 So, I think the Examiner's analysis here is really a hindsight
20 analysis and it ignores the most important teachings of Willems in that
21 analysis.

22 JUDGE HAIRSTON: Did you make a hindsight argument in your
23 Brief?

24 MR. DUNLEAVY: I don't think we specifically stated the hindsight
25 argument in our Brief; that's correct.

1 Now, the Examiner takes the position that a skilled person would be
2 motivated to combine the ex-server with the windows manager to therefore
3 put the graphic-user interface in control on the server. It's our position a
4 skilled person wouldn't do that, reading Willems, because that does not
5 reduce the network traffic as compared to the figure nine embodiment of
6 Willems; and also, we don't know what the impact of that is on the front-end
7 code at all. The Examiner speculates about that but doesn't really provide
8 any evidence or indication as to what front-end code would or would not be
9 required in order to implement that embodiment.

10 Now, even if you did put those two things together, as the Examiner
11 suggests, you're still not quite to the present invention because you still don't
12 have a way to execute a local application or display content generated on the
13 local computer in that user interface. That user interface is only going to be
14 displaying content and executing the remote applications in the ex-Windows
15 environment which is on the server.

16 So, even if the skilled person would combine those two things, you
17 still wouldn't get to the present invention because you'd still have one
18 interface for the ex-Windows. You then have to switch to another interface
19 if you wanted to run the local application for display of the content.

20 So, Willems just doesn't have any teachings at all, as far as we can
21 find, to execute local apps through its interface or to display content
22 generated on the local computer through that user interface.

23 So, that pretty much summarizes, I think, the key points in relation to
24 Willems.

25 Do you have any other questions?

26 JUDGE BAUMEISTER: No questions.

1 JUDGE MARTIN: No more questions.

2 JUDGE HAIRSTON: No more questions.

3 Thank you, counsel.

4 MR. DUNLEAVY: Okay. Thank you very much for your time.

5 (Whereupon, at approximately 10:05 a.m., the proceedings were
6 concluded.)

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